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on the human rights of migrants
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Fourth session, 8-12 February 1999
Item 14 (a) of the provisional agenda

SPECIFIC GROUPS AND INDIVIDUALS

MIGRANT WORKERS

Report of the working group of intergovernmental experts on the human rights of migrants, submitted in accordance with Commission on Human Rights resolution 1998/16

Chairman-Rapporteur: Mr. Jorge A. Bustamante (Mexico)

GE.99-11282 (E)

CONTENTS

		Paragraphs	Page
Introduction		1 - 2	4
I.	ORGANIZATION OF THE THIRD SESSION	3 - 19	4
II.	MAIN ISSUES DISCUSSED DURING THE THIRD SESSION	20 - 39	6
	A. Document E/CN.4/AC.46/1998/5	20 - 33	6
	B. General comments made during plenary meetings or received at the end of the third session	34 - 38	8
	C. Highlights of private meetings	39	9
III.	UNITED NATIONS PROTECTION OF MIGRANTS THROUGH SEVERAL OF ITS HUMAN RIGHTS INSTRUMENTS AND A MECHANISM OF THE COMMISSION ON HUMAN RIGHTS	40 - 49	10
	A. Committee on Economic, Social and Cultural Rights	41 - 42	10
	B. Human Rights Committee	43	10
	C. Committee on the Rights of the Child	44	11
	D. Committee on the Elimination of Racial Discrimination	45	11
	E. Working Group on Arbitrary Detention	46	11
	F. Reactions to existing protection of migrants at the international level	47 - 49	12
IV.	ORGANIZATION OF THE FOURTH SESSION	50 - 65	13
V.	MAIN ISSUES DISCUSSED DURING THE FOURTH SESSION	66 - 75	15
VI.	THE WORKING GROUP'S FINDINGS ON OBSTACLES TO THE EFFECTIVE AND FULL PROTECTION OF THE HUMAN RIGHTS OF MIGRANTS	76 - 101	17
	A. Institutional obstacles	79 - 85	17
	B. Social obstacles	86 - 89	19
	C. Economic obstacles	90 - 101	20

CONTENTS (continued)

		Paragraphs	Page
VII.	RECOMMENDATIONS	102 - 124	22
	A. Recommendations concerning institutional and legal obstacles	102 - 107	22
	B. Recommendations concerning social obstacles	108 - 114	23
	C. Recommendations concerning economic obstacles	115 - 122	24
	D. Recommendation concerning a monitoring mechanism at the international level	123 - 124	25
Annex:	Table of preliminary observations		27

Introduction

1. At its fifty-fourth session, the Commission on Human Rights, in its resolution 1998/16, decided to reconvene the working group of five intergovernmental experts on the human rights of migrants, on the same basis as set out in paragraph 3 of Commission resolution 1997/15, to meet for two periods of five working days prior to the fifty-fifth session of the Commission.

2. The Commission requested the working group of intergovernmental experts to submit a report to the Commission on Human Rights at its fifty-fifth session. The present report is submitted in response to that request.

I. ORGANIZATION OF THE THIRD SESSION

Opening and duration of the session

3. The third session of the working group of intergovernmental experts on the human rights of migrants was held at the Palais des Nations, Geneva, from 23 to 27 November 1998. The session was opened by the Chief of the Support Services Branch of the Office of the High Commissioner for Human Rights.

Composition of the working group

4. The working group at its third session consisted of the following five experts: Mr. Jorge Bustamante (Mexico), Mr. Guillaume Pambou Tchivounda (Gabon), Mr. Joaquim Ludovina do Rosario (Portugal), Mr. Bimal Ghosh (India), Mr. Oleg V. Shamshur (Ukraine). Mr. Bimal Ghosh was nominated by the outgoing Chairman of the fifty-fourth session of the Commission on Human Rights to replace Mr. M. Mijarul Quayes, at the request of the Asian Group. Mr. Oleg V. Shamshur was absent for the entire duration of the third session.

Election of officers

5. At the 1st meeting of the third session, on 23 November 1998, the working group elected Mr. Jorge A. Bustamante (Mexico) Chairman-Rapporteur for its third and fourth sessions.

Adoption of the agenda

6. Also at the 1st meeting, the working group, on the basis of the provisional agenda (E/CN.4/AC.46/1998/6), adopted the following agenda for its third session:

1. Election of officers.

2. Adoption of the agenda.

3. Implementation of Commission on Human Rights resolution 1998/16, entitled "Migrants and human rights".

Observers

7. Representatives of the following States members of the Commission on Human Rights attended the third session as observers: Bangladesh, Brazil, Chile, China, Cuba, Czech Republic, Ecuador, El Salvador, France, Guatemala, India, Indonesia, Italy, Japan, Malaysia, Mexico, Morocco, Pakistan, Peru, Philippines, Poland, Russian Federation, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

8. Representatives of the following other States Members of the United Nations also attended the session as observers: Bahrain, Colombia, Croatia, Egypt, Estonia, Ethiopia, Iran (Islamic Republic of), Kyrgyz Republic, Latvia, Paraguay, Portugal, Singapore, Spain, Syrian Arab Jamahiriya, Thailand, Turkey.

9. The following non-member State of the United Nations was also represented by an observer: Holy See.

10. Representatives of the following intergovernmental organization attended the session as observers: International Organization for Migration.

11. The International Committee of the Red Cross was also represented by an observer.

12. Representatives of the following non-governmental organizations in consultative status with the Economic and Social Council attended the session as observers: Canadian Council of Churches, Caritas Internationalis, Conference of European Churches, International Federation of Human Rights Leagues, International Movement against all Forms of Discrimination and Racism, International Service for Human Rights, Women's International League for Peace and Freedom, World Council of Churches, World Young Women's Christian Association.

13. Representatives of the following non-governmental organization without consultative status with the Economic and Social Council also attended the session as observers: SIRDO - Romanian Independent Society for Human Rights.

Documentation

14. The working group at its third session had before it documents issued for its first and second sessions, as well as a working paper (E/CN.4/AC.46/1998/5) prepared by Mr. Jorge Bustamante.

15. The working group also had available for consultation various reports, publications, articles and other papers relevant to its mandate collected by the secretariat or received from various sources.

Organization and methods of work

16. With regard to its methods of work, the working group decided to work in a combination of public and closed meetings. The working group held six public meetings and four closed meetings.

17. At the 1st plenary meeting, the Chairman-Rapporteur proposed a draft timetable for the organization of the work of the third session, which was adopted. The timetable was based on the programme of work adopted by the working group at the end of its second session (E/CN.4/1998/76, annex II).

18. In the course of public meetings, the working group held an exchange of views in the context of its mandate and received contributions from Governments, United Nations organs and intergovernmental and non-governmental organizations.

19. The working group decided to submit to the Commission on Human Rights at its fifty-fifth session a consolidated report covering the work of its third and fourth sessions.

II. MAIN ISSUES DISCUSSED DURING THE THIRD SESSION

A. Document E/CN.4/AC.46/1998/5

1. Oral presentation

20. At the 1st plenary meeting, Mr. Jorge Bustamante, speaking in his capacity as an expert member of the working group, presented his working paper, contained in document E/CN.4/AC.46/1998/5. He explained that the working paper was an analysis of the responses sent to the working group by Governments, intergovernmental and non-governmental organizations to the questionnaire (E/CN.4/1998/76, annex I) designed by the working group at the close of its first session in 1997. The working paper was divided into two parts, the first entitled "A conceptual frame of reference about the vulnerability of migrants as subjects of human rights", the second, "The question of obstacles".

21. The main premise of the working paper was that the basic human rights of migrants were violated because of their structural vulnerability. They were a vulnerable group, like indigenous populations and minorities, and lacked protection. The question, then, was how to guarantee them the enjoyment of their human rights. Mr. Bustamante said that he had been inspired by the words of the High Commissioner for Human Rights in her address at Oxford University in 1997: "one lesson we need to learn, and to reflect in our approach, is that the essence of rights is that they are empowering". It was precisely the task of the working group to explore ways in which migrants could be empowered so that their human rights would be respected in practice.

22. He stressed that it had become clear from the replies received that there was awareness on the part of States and non-governmental organizations of the increasing extent and intensity of human rights violations of migrants. The horrors of trafficking, abuse of agricultural workers and the isolation of domestic workers were daily occurrences. Despite that level of awareness and concern very few States had ratified the 1990 Convention on migrants.

2. Reactions to document E/CN.4/AC.46/1998/5

23. Mr. Ghosh congratulated Mr. Bustamante on his working paper and agreed that the infringement of the basic human rights of migrants was closely linked to their vulnerability, resulting from their relative powerlessness in a

foreign country. Where there was an absence of power-sharing, the risk was that the dominant party would exploit the weaker. He cautioned, however, against any attempts at addressing the issue of power differential within the rigid framework of the North-South divide, since it cut across country groupings based on stages of development. Indeed, more and more countries, in the North as in the South, were increasingly both receiving and sending migrants, and their nationals could be either dominant or dominated.

24. Another dimension of the problem was the gap between the capacity of a State to respect human rights and its willingness to do so. Some States could and would respect human rights standards, while others lacked the capacity and/or willingness. It was not enough that a country simply ratify the relevant human rights instruments. It must also ensure their effective application. Even when a State had ratified a human rights convention, it might fail to implement it fully, either because it lacked the political will or because it did not have the necessary capacity. That made external monitoring of the situation, including a systematic diagnosis of the causes of non-implementation of standards, critically important.

25. He drew the attention of the working group to the alarming rise of the so-called "informal economy" in developed countries. In the 1970s, the informal sector had accounted for, on average, only about 5 per cent of Western Europe's gross national product, while in 1998, it had risen to 17 per cent. He warned that that sector had been increasingly attracting immigrant workers, who were mostly irregular, docile and, therefore, extremely vulnerable, and that, at the same time, it remained largely out of the control of States with regard to the protection of basic human and workers' rights.

26. He agreed with the suggestion that NGOs, particularly the migrants' associations in both sending and receiving countries, could play an important role in protecting the rights of migrant groups. In that connection, he raised the issue of due recognition of such associations by the States concerned, based on an agreed set of rules designed, inter alia, to ensure their democratic functioning, transparency and, thus, overall credibility and legitimacy.

27. Mr. Pambou Tchivounda also congratulated Mr. Bustamante. He pointed out that the working paper focused mainly on vulnerability as opposed to obstacles and remedies, but he appreciated the conceptual framework used.

28. He commended what the High Commissioner had said in Oxford. He considered that the words "the essence of rights is the power that they confer" should be mentioned in all international instruments. However, reality was closer to the fact that those who had power were likely to use it and abuse it. That could be the case for States or for groups of individuals.

29. He gave as an example a situation in his own region which, he believed, could not be ignored. The richest area of ex-Zaire, now the Democratic Republic of the Congo, had experienced a very large influx of persons from neighbouring countries; those persons were now requesting the independence of that area. Such a development gave rise to concern.

30. He wondered whether existing international instruments included sufficient provisions for the protection of the human rights of migrants and remedies when those rights had been violated.

31. Mr. do Rosario joined the other members in his appreciation of the working paper prepared by Mr. Bustamante. He agreed that vulnerability was the core issue and the condition characterizing migrants.

32. The relationship between non-integration and vulnerability was a crucial one. Persons with problems of integration were obviously the most vulnerable. A key issue for the working group's consideration should therefore be integration and the role that could be assumed by States, intergovernmental and non-governmental organizations and migrants associations in receiving and sending countries.

33. At the 1st, 2nd, 3rd and 5th plenary meetings the observers for Mexico, the Czech Republic, Bangladesh, Turkey, El Salvador, France, the Holy See, Peru, Spain, Ecuador, Egypt and Colombia, as well as the observers for the International Organization for Migration and the World Council of Churches, commended Mr. Bustamante on his working paper.

B. General comments made during plenary meetings or received at the end of the third session

34. Several observers referred to new developments that had occurred in their own countries since the previous session of the working group. The observer for France provided exact figures, by country of origin, for non-nationals currently residing in France and mentioned that efforts had been made to regularize the situation of irregular migrants (over 70,000 individuals since 1997). The observer for Turkey mentioned legislative changes with respect to the length of time for which residence permits were issued and announced that Turkey would soon become a party to the 1990 Convention on migrants.

35. Some delegations felt that clear distinctions should be drawn between regular migrants and irregular or undocumented migrants. One delegation was of the view that, since the specific circumstances of illegal entry or illegal stay in the host country might have as a consequence lawful limitations of certain rights of illegal migrants, it was necessary to study and deal with the issue of illegal migrants separately. A distinction also had to be drawn between the two groups in relation to possible remedies for violations of the human rights of immigrants. For instance, dignified and human return to the sending country might be an appropriate solution in the case of most illegal immigrants, whereas return should be considered in a different light as far as legal and, in particular, long-term migrants were concerned. Other delegations considered that what was important was to focus on the human rights of migrants as a whole, be they regular or not. Whichever position was held, all agreed that the fundamental principle of State sovereignty should not be called into question.

36. Another topic of discussion was State responsibility and whether the working group should confine itself to the responsibility of receiving States or should include the responsibility of sending countries, particularly with regard to women and children. Obstacles and solutions in the host country

could not always be disentangled from obstacles and solutions elsewhere. One delegation was of the opinion that limiting the task of the working group to addressing the question of the human rights of migrants in receiving countries was not desirable. Migration should be seen as a process involving sending countries and receiving countries. The working group naturally could not study migration in its whole scope. It should, however, try to identify typical, frequent and grave violations of the human rights of migrants, notwithstanding at which stage of the migration process they took place. The delegation stressed that, not only host countries but also Governments of the sending countries had responsibilities with regard to migrants, such as the duty to readmit their own nationals.

37. Several observers listed what they considered to be the major obstacles existing to the effective and full protection of the human rights of migrants. Those obstacles were included in a draft table (see annex 1) which was prepared by the working group and which became the subject of general discussion during the third session. The working group decided to include in the table a human rights framework using basically the Universal Declaration of Human Rights because of its universal authority and because of the current absence of a systematic in-depth analysis of the scope of the provisions in international instruments which could be applied to migrants.

38. The importance was emphasized of informing public opinion properly in order to avoid the development of racist behaviour, the labelling of migrants as "deviants" and the use of them as scapegoats, and also as a means of facilitating the integration of migrants in receiving countries.

C. Highlights of private meetings

39. The members of the working group decided to share with all participants the following highlights of their deliberations in closed meetings:

(a) The working group considers that its mandate is not to deal with all aspects of international migration and human rights, and finds it desirable to limit its tasks to the question of the human rights of migrants in receiving countries, taking into account the fifth preambular paragraph of Commission on Human Rights resolution 1998/16, which reads as follows: "Bearing in mind the situation of vulnerability in which migrants frequently find themselves, owing, among other things, to their absence from their State of origin and to the difficulties they encounter because of differences of language, customs and culture";

(b) In some countries, integration is seen as one of the main ways of solving problems of the violation of the human rights of migrants. The working group considers that integration, while a valuable potential means of enhancing the empowerment of migrants, cannot be applied to cases such as "circular or seasonal" labour migration and, therefore, cannot be the sole means of achieving empowerment. Further, the issues of integration and of protection of basic rights are not exactly identical. For example, while the former remains primarily a matter of domestic policy, the latter transcends national frontiers and has emerged as a global concern;

(c) The working group fully respects the right of States to sovereignty, in accordance with the Charter of the United Nations, in particular the sovereign right to decide who should or should not enter their territories;

(d) The basic human rights of migrants have to be respected, even if they are irregular migrants.

III. UNITED NATIONS PROTECTION OF MIGRANTS THROUGH SEVERAL OF ITS HUMAN RIGHTS INSTRUMENTS AND A MECHANISM OF THE COMMISSION ON HUMAN RIGHTS

40. At the invitation of the working group, members of treaty bodies, of the Working Group on Arbitrary Detention and of the secretariat gave briefings about the work of treaty bodies in relation to migrant issues and answered questions posed by the intergovernmental experts of the working group and by observers.

A. Committee on Economic, Social and Cultural Rights

41. Mr. Philip Alston, Chairman of the Committee on Economic, Social and Cultural Rights, said that the International Covenant on Economic, Social and Cultural Rights was not restricted in its application to nationals of the ratifying State. There was no reason why migrants, be they in a regular or in an irregular situation, should be excluded. When analysing State reports, the Committee had insisted on posing questions concerning the treatment of migrants and their human rights situation. He pointed out, however, that the Committee focused on a wide range of rights in relation to a wide number of vulnerable groups and could not devote as much time as a specialized committee to problems faced by migrants.

42. Mr. Javier Wimer, a member of the Committee, stressed that migrants were unjustly targeted as criminals. He welcomed the existence of the working group, convinced that the increasing flow of migrants required urgent attention at the international level.

B. Human Rights Committee

43. Mr. Francisco José Aguilar-Urbina, Chief of the Support Services Branch of the Office of the High Commissioner for Human Rights (OHCHR) and former Chairman of the Human Rights Committee, spoke about the differences in function between that organ and the Committee on Economic, Social and Cultural Rights, in particular the fact that individual communications could be dealt with by the Human Rights Committee, in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights. That Covenant applied to all persons under the jurisdiction of the ratifying State, be they nationals or not. Furthermore, article 2 of the Covenant compelled States to take steps, whether legislative, administrative or other, to give effect to the rights in the Covenant as soon as they became parties to it. Article 26 on non-discrimination did not differentiate between nationals and foreigners. Nevertheless, political rights were not usually recognized for foreigners. The only article establishing a difference between regular and irregular

migrants was article 13, which referred to the issue of expulsion. The Committee had considered immigration matters in general when dealing with State reports.

C. Committee on the Rights of the Child

44. Mrs. Soussan Raadi-Azarakhchi, a staff member of OHCHR, recalled that the Convention on the Rights of the Child had been ratified by 191 States (only two States in the world had not ratified it). The Convention encompassed a very large number of economic, social, cultural, civil and political rights. Four main principles guided the work of the Committee: (i) the principle of non-discrimination, (ii) the principle of the best interests of the child, (iii) the right to life, development and survival and (iv) respect for the views of the child. In that context, when considering a State report the Committee focused on children in difficult situations, including children of migrants. Those children, like all children, were entitled to protection against abuse. As an outcome of the dialogue it held with States, the Committee adopted concluding observations in which it generally called for measures to protect and promote the rights of children, including migrants' children, better. Among recommendations of specific relevance to such children, the Committee had: (i) emphasized that children were entitled to have access to educational, health and social services; (ii) appealed to States to change their legislation and to adhere to the 1990 Convention on migrants; (iii) given the principle of family reunification special attention; and (iv) proposed that special educational measures be taken to train future professionals who would be well prepared to educate migrant children.

D. Committee on the Elimination of Racial Discrimination

45. Mr. Robert Husbands, a staff member of OHCHR, said that article 1, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination accepted that States would differentiate between nationals and non-nationals. However, the Committee had adopted a general recommendation in 1993 clearly indicating that States had the obligation to report on the situation of foreigners under their jurisdiction; and another in 1996 on the rights of refugees and displaced persons under the Convention. The Committee had adopted a broad interpretation of the term "racial discrimination" in order to include many vulnerable groups within its mandate.

E. Working Group on Arbitrary Detention

46. Mr. Petr Uhl, a member of the Working Group on Arbitrary Detention, recalled that the Commission on Human Rights, in its resolution 1997/50, had requested the Working Group to collect information concerning the situation of immigrants and asylum seekers who were allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy. In accordance with the mandate which had been conferred on it by the Commission, the Working Group had undertaken missions to the United Kingdom of Great Britain and Northern Ireland and Romania. The reports prepared following those missions would be submitted to the Commission at its fifty-fifth session. Mr. Uhl stressed the importance and necessity of urgent consideration of questions relating to persons who had sought asylum.

F. Reactions to the existing protection of migrants at the international level

47. At the 5th plenary meeting the observers for Mexico, Colombia, Egypt, Cuba, Peru, the Czech Republic, Paraguay, France, India, Guatemala and Turkey, as well as for the Holy See, the International Organization for Migration, the World Council of Churches and Caritas Internationalis expressed appreciation of the oral presentations concerning the implementation of the core international human rights instruments. All speakers agreed that although the treaty bodies addressed a considerable number of issues that affected migrants, they had no focused or consistent approach towards that very specific vulnerable group. Several delegations expressed the view that that demonstrated the wisdom of having elaborated the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the other core instruments not focusing specifically on migrants.

48. Regretting that the 1990 Convention had not yet entered into force, an overwhelming majority of speakers felt the need to establish some kind of monitoring and protection mechanism. That mechanism, which could be, inter alia, a special rapporteur/independent expert or an expert group, could carry out the following functions:

(a) Monitor the development of obstacles hindering the enjoyment by migrants of their human rights, on the basis of communications received from alleged victims, individuals and non-governmental organizations, etc.;

(b) Initiate a dialogue with concerned States, and in the light of that dialogue, submit an annual report to the Commission on Human Rights containing recommendations;

(c) Play an advocacy role concerning the human rights of migrants and report to the Commission on an annual basis on one of a number of themes, such as regional arrangements, administrative processes, the role of civil society, political parties, the media etc.;

(d) Identify existing norms and standards as they related specifically to the human rights of migrants, with a view to listing those norms and suggesting appropriate follow-up measures;

(e) Coordinating the efforts of the Commission on Human Rights with those of the Office of the High Commissioner for Human Rights, the International Organization for Migration, the International Labour Organization and non-governmental organizations working in the field of the human rights of migrants.

49. The delegation of France reserved its position on the proposal to establish a new mechanism and stressed the need to explore means of sensitizing the existing mechanisms to the question of migrants. If a new mechanism was in fact established, it should complement the existing mechanisms. The delegation also recalled the ongoing studies on reform of the mechanisms of the Commission on Human Rights; the purpose of the reform was to make them more rational and more effective, and that must be taken into account.

IV. ORGANIZATION OF THE FOURTH SESSION

Opening and duration of the session

50. The fourth session of the working group of intergovernmental experts on the human rights of migrants was held at the Palais des Nations, Geneva, from 8 to 12 February 1999. Mr. Jorge A. Bustamante (Mexico) continued to act as Chairman-Rapporteur. All the members were present at all the meetings.

Adoption of the agenda

51. At the 1st meeting the working group, on the basis of the provisional agenda (E/CN.4/AC.46/1999/1), adopted the following agenda for its fourth session:

1. Adoption of the agenda.

2. Implementation of Commission on Human Rights resolution 1998/16, entitled "Migrants and human rights".

Observers

52. The following States members of the Commission on Human Rights attended the session as observers: Argentina, Austria, Bangladesh, Brazil, Canada, China, Colombia, Cuba, Ecuador, El Salvador, France, Germany, India, Italy, Japan, Latvia, Mexico, Morocco, Norway, Pakistan, Peru, the Philippines, Poland, Romania, the Russian Federation, South Africa, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay, Venezuela.

53. The following other States Members of the United Nations also attended the session as observers: Denmark, Egypt, Estonia, Ethiopia, Iran (Islamic Republic of Iran), Lithuania, Paraguay, Portugal, Spain, Sweden, Turkey.

54. The following non-member State of the United Nations was also represented by an observer: Holy See.

55. A representative of the following intergovernmental organization attended the session as an observer: International Organization for Migration.

56. A representative of the following United Nations body attended the session as an observer: Office of the United Nations High Commissioner for Refugees (UNHCR).

57. A representative of the following specialized agency attended the session as an observer: International Labour Organization (ILO).

58. Representatives of the following non-governmental organizations in consultative status with the Economic and Social Council attended the session as observers: Association of World Citizens, Caritas Internationalis, Centro di Ricerca e Documentazione Febbraio 74 (CERFE), Commission of the Churches on International Affairs of the World Council of Churches, Human Rights Advocates, International Catholic Migration Commission, International

Commission of Jurists, International Confederation of Free Trade Unions, International Movement against All Forms of Discrimination and Racism, International Service for Human Rights, World Vision International.

59. Representatives of the following non-governmental organizations without consultative status with the Economic and Social Council attended the session as observers: Migrants Rights Watch, Solidaritas Perempuan (Women's Solidarity for Human Rights).

Documentation

60. The working group at its fourth session had before it documents issued for its first, second and third sessions, as well as further replies to the questionnaire of the working group:

E/CN.4/AC.46/1998/3/Add.53	Submission from Spain
E/CN.4/AC.46/1998/3/Add.54	Submission from the Netherlands
E/CN.4/AC.46/1998/3/Add.55	Submission from the United Arab Emirates
E/CN.4/AC.46/1998/3/Add.56	Submission from Finland
E/CN.4/AC.46/1998/3/Add.57	Submission from the Sudan
E/CN.4/AC.46/1998/3/Add.58	Submission from Malta
E/CN.4/AC.46/1998/3/Add.59	Submission from Honduras
E/CN.4/AC.46/1998/3/Add.60	Submission from Colombia
E/CN.4/AC.46/1998/3/Add.61	Submission from Paraguay
E/CN.4/AC.46/1998/3/Add.62	Submission from Morocco

Organization and methods of work

61. With regard to its method of work, the working group decided to work in a combination of public and closed meetings. The working group held five public meetings and four private meetings.

62. At the 1st plenary meeting, the Chairman-Rapporteur proposed a draft timetable for the organization of the work of the fourth session, which was adopted. The timetable was based on preliminary recommendations drafted by the experts during the period between the third and fourth sessions. These recommendations included measures to achieve equality in law and practice, to disseminate information through the media and civil society, to combat trafficking and to monitor the protection of migrants at the international level.

63. In the course of public meetings, the working group held an exchange of views on those preliminary recommendations.

64. In the course of private meetings, the experts adopted their findings on obstacles, as contained in section VI below, and recommendations, as contained in section VII below.

65. A separate meeting was held for representatives of intergovernmental organizations and of non-governmental organizations wishing to express collectively their support for the work of the working group, their willingness to provide assistance and their wish to participate actively in the debate on recommendations.

V. MAIN ISSUES DISCUSSED DURING THE FOURTH SESSION

66. Most observers underlined the immense amount of work still to be done in order to gather information regarding the human rights situation of migrants, to promote their human rights and to monitor violations. There was an emerging consensus on the need to continue to focus attention on the specificity of the problems faced by migrants. It was generally recognized that the 1990 Convention on migrants provided the needed framework for the protection and enjoyment of the human rights of migrants and their families. However the Convention had not yet entered into force and efforts to promote its ratification should be intensified. Those observers supported the appointment by the Commission of a special rapporteur for a period of three years to advocate, promote and monitor the protection of the human rights of migrants. They contributed to the drafting of recommendations by suggesting wording and ideas.

67. Several observers reiterated that migrants' rights were a crucial test of the indivisibility and universality of human rights and that migrant issues were cross-cutting. They referred to the need to analyse further the particular situations of different groups of migrants: women, children, qualified migrants, etc. but agreed that basic human rights applied to all.

68. Some delegations expressed concern that the preliminary recommendations regarding economic and labour market policies did not address sufficiently the complexity of unemployment in receiving countries and the need to find long-term solutions for irregular migration through recognition of shared responsibility. Others referred to the need for formulating precise recommendations in order to inspire action on the part of the Commission on Human Rights.

69. Several NGO delegations referred to precise cases of violations of the human rights of migrants and expressed their agreement that there was a need to take concrete steps to address human rights violations at the international level which would encourage States to take action on the domestic front. They made specific suggestions/proposals regarding the wording of preliminary recommendations.

70. Some observers, in particular the observer for Germany, speaking on behalf of the European Union, stressed the need to use existing mechanisms to address issues relating to migrants better. They considered that existing mechanisms could be sensitized in order to give more attention to alleged violations of human rights of migrants and to develop a consistent approach. These mechanisms included treaty bodies, thematic rapporteurs (on racism, torture, etc.) and other bodies, such as the Working Group on Involuntary Disappearances and the Working Group on Arbitrary Detention. Furthermore, the observer for Germany underlined the European Union's view that the mandate of any new mechanism would need to be carefully formulated in order to avoid overlap with existing mechanisms. Other observers said that consideration should also be given to the fact that the Commission on Human Rights had embarked on a review of its mechanisms with the purpose of strengthening existing mechanisms and reducing the number of mechanisms, if necessary, to avoid duplication.

71. Other observers reacted by mentioning that although those mechanisms touched migrants' issues there was no coordination among them, they had their own respective heavy agendas and did not consider migrants as a priority. Furthermore, there were strong precedents for Commission mechanisms monitoring the same subject matter as treaty bodies. For example, the Special Rapporteur on Torture and the Committee against Torture; the Special Rapporteur on violence against women and the Committee on the Elimination of Discrimination against Women; the Special Rapporteur on racism and the Committee on the Elimination of Racial Discrimination; the Special Rapporteur on the sale of children and the Committee on the Rights of the Child.

72. During the final public meeting, the observer for the United States of America said that his Government had not signed the Migrant Workers Convention because it believed that existing human rights instruments afforded migrant workers all necessary human rights protection. The problem, as with many other situations, was lack of implementation, not the need for new standards. He underlined that the United States did not support the establishment of a special rapporteur of the Commission on Human Rights on the question of migrants. First, because such a mechanism would have a considerable overlap with other mandates and second, because of the lack of resources, including secretariat support, for existing mandates. Lastly, his Government believed it was imperative to await the outcome of the Commission's review of mechanisms before establishing new thematic mandates.

73. The observer for Spain commended the work done by the working group and said that its report would serve as a firm basis for negotiations at the fifty-fifth session of the Commission and assist it in deciding which follow-up mechanism to establish. Not all recommendations made by the working group would have the full support of his Government. However, in his opinion, the report rightly took into consideration the following six main areas of concern: the need to eliminate unjustifiable discrimination in the exercise of rights and in access to existing services; promoting living together based on democratic values and attitudes of tolerance; guaranteeing migrants a legally and socially stable situation; combating the barriers impeding integration; eradicating any signs of exploitation; and mobilizing society against racism and xenophobia.

74. The vast majority of speakers unreservedly supported the working group's recommendation to designate a special rapporteur for a renewable three-year period, with the functions and terms of reference contained in paragraphs 48 and 124.

75. The representative of the Steering Committee of the Global Campaign for the Ratification of the International Convention on Migrants' Rights, an alliance of intergovernmental and non-governmental organizations, supported the substantial results of the working group, in particular its recommendation concerning further efforts towards ratification of the 1990 Convention on migrants. The Steering Committee recognized the value of an ongoing mechanism within the United Nations human rights monitoring system.

VI. THE WORKING GROUP'S FINDINGS ON OBSTACLES TO THE EFFECTIVE AND FULL PROTECTION OF THE HUMAN RIGHTS OF MIGRANTS

76. The working group estimated the number of migrants worldwide currently to be about 130 million of whom, according to rough estimates, there could be as many as 30 million in an irregular situation in the various receiving States.

77. As subjects of human rights, migrants are vulnerable because they are denied recognition and power. They are vulnerable because they are considered as "outsiders" in the receiving societies. They are vulnerable because of the failure of the receiving States to apply international human rights standards either to regular or irregular migrants. Real empowerment of migrants has legal implications at the national and international levels, and short-term as well as long-term solutions should be sought. The need for this has become even more acute owing to increasing problems of xenophobia, prejudice and discrimination against migrants in receiving countries.

78. According to the five intergovernmental experts of the Working Group, the main institutional, social and economic obstacles to the full enjoyment of the human rights of migrants include those described in the following paragraphs.

A. Institutional obstacles

Absence or non-application of standards and norms in national law

79. A primary obstacle to full respect and enjoyment of the basic human rights of migrants is the absence, non-application or non-acceptance of the universal standards and norms in national law which explicitly recognize and extend to migrants basic human rights. Numerous countries have incorporated international human rights standards in their domestic legal systems, generally restricting their application to citizens or nationals. Even where they have been incorporated, universal human rights standards are not fully enjoyed by migrants, or are violated. Ignorance, non-awareness or disregard of relevant human rights norms by local authorities or individuals also negatively affect migrants. This phenomenon restricts the ability of the affected migrant community and potential supporters to advocate and act to defend their rights.

Absence of focused attention to the rights of migrants under different international instruments

80. The problem is also related to, and is often exacerbated by, the wide dispersal in different international instruments of the human rights provisions which are of special relevance to various migrant groups. The absence of a consolidated text of the various provisions tends to inhibit focused and systematic attention to migrants as a specific vulnerable social group, and makes the tasks of the relevant advocacy bodies more difficult.

Failure to ratify international human rights standards

81. Failure to achieve widespread ratification of the International Labour Organization (ILO) Convention concerning Migration for Employment (Revised), 1949 (No. 97), the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (No. 143) and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families represents a very serious obstacle to the full enjoyment of the human rights of migrants. Only 41 States are party to ILO Convention No. 97, 18 to Convention No. 143, and 10 States have ratified the 1990 Convention on migrants.

Migrants' vulnerability due to organizational weakness

82. The protection of rights and the defence of the interests of various social groups in a modern State largely depend on the organizational strength that each group can mobilize and the pressure that it actually or potentially exercises for that purpose. Often devoid of any affiliation to any strong organization in the host country, migrants, not surprisingly, tend to remain at the margin of its power structure, which only adds to their vulnerability. In the absence of constant vigilance and any strong pressure on their behalf, the migrants' status remains insecure even in countries where their basic human rights are recognized in national laws. Despite the establishment of their own associations by migrant communities in a number of countries, often with the help of churches, trade unions and political parties, by and large the organizational base of the migrant population continues to be extremely weak. Even when autonomous associations of migrants are permitted, members of such organizations can be easily deported on the grounds that they are threatening "public order", and in the absence of any precise definition of public order, the potential threat could make their situation precarious and vulnerable.

Impunity and denial of justice

83. In countries where migrants are used as scapegoats for economic, social or public health calamities, there is often impunity for violators of the human rights of migrants. Related to this are negative attitudes on the part of those in power which inhibit the effective application of the basic rights of migrants, even when they are provided for in law. Such negative attitudes often lead to passive or hidden discrimination against migrants, and recourse to civil remedies is constrained by the difficulty of proving formal violation of rights and the financial cost involved in the legal procedures. Despite the principle of equality, which may be guaranteed by law, the migrants in such circumstances suffer from discrimination, especially with regard to access to opportunities, creating a vicious circle of feelings of inferiority and powerlessness which may affect even the second or third generation of migrants.

Abuses of human rights in connection with expulsions

84. While a sovereign State has the right to expel from its territory a foreigner whose entry or stay is illegal, human rights violations tend to occur in connection with identifying, finding and detaining such persons. In

recent years, there have been many cases in various countries of arbitrariness in connection with detention, and use of force in securing the expulsion of members of migrant groups. In a number of instances, inhuman or degrading treatment has been used, in violation of existing human rights norms. While non-compliance with existing human rights laws is clear in many such cases, there is also a problem of gaps in existing laws or a need to devise a more focused articulation of human rights provisions to cover specific situations relating to expulsion.

Inadequate training of law enforcement officials in the field of human rights

85. Inadequate training of law enforcement personnel on human rights issues and the weakness of the judicial institutions in upholding the basic rights of migrants are also among the major obstacles to full enjoyment by migrants of their basic human rights. These deficiencies are often related to lack of adequate financial resources for, or to the low priority attached to, the protection of migrants human rights.

B. Social obstacles

Social exclusion

86. In a number of countries, migrants often find themselves constrained to live in urban areas characterized by lack or inadequate provision of basic public services, or sub-standard facilities. Many of them have little or no access to public education, health care or employment, a situation often amounting to violation of their social and economic rights. The offspring of migrants can easily inherit this condition, especially when the parents face obstacles in integrating socially and economically into the host society.

Xenophobia and racism

87. Migrants are often victims of xenophobia and racism, behaviour commonly related to weak or insufficient democratic values and poor traditions of tolerance towards those considered "different" in a social context. Racial, ethnic, religious and other characteristics of migrants distinct from dominant characteristics of the host population often serve as the basis for discrimination. Popular and/or politically driven anti-foreigner sentiment based on racial, ethnic, national or religious characteristics is a strong obstacle both to recognition of and respect for the human rights of migrants. The failure of Governments and law enforcement personnel to take concrete measures to discourage and combat xenophobia and racism can also be considered an obstacle to respect for the human rights of potential or actual victims. Empowerment in the human rights context requires a clear recognition of inherent human rights and dignity. The absence of such recognition by the State and civil society often paves the way for infringement of migrants' human rights.

Prejudice, stereotypes and scapegoats

88. The increasing targeting of migrants in countries in all regions of the world as scapegoats for domestic, social and economic problems has direct and indirect consequences, including acceptance of, and impunity for, direct

attacks on their rights and integrity. The deliberate attribution to migrants of blame for major problems often overlaps with xenophobic and racial bias.

89. A significant segment of the mass media and public figures play an important role in the perpetuation of stereotyping and the use of migrants as scapegoats. These negative sentiments, called "social construction of an enemy" by sociologists, victimize migrants. Such victimization tends to manifest itself in direct hostility, violence or violations of the right to life and physical integrity.

C. Economic obstacles

90. Conditions of economic deprivation are a cause and an effect of the vulnerability of migrants in host societies. Economic factors accentuated by globalization represent significant obstacles to the realization of respect for their human rights.

Labour market discrimination

91. The xenophobia and racial discrimination to which migrants are subjected find their expression in discrimination in access to jobs and in employment. Disproportionally hit by unemployment because of discrimination, many migrants find themselves excluded from the labour market and thus from the main avenue towards economic self-sufficiency and integration into society at large.

92. When employed, migrants are often over-represented in bottom-rung jobs which in many instances are below their skill levels. Migrants in general and irregular migrants in particular are notably to be found in dirty, demanding and dangerous jobs shunned by nationals. The resulting segmentation of the labour market implies further obstacles to the full enjoyment of migrants' human rights. This is exacerbated by the rapid expansion of the informal sector of the economies of industrialized migrant-receiving countries and the growing demand for irregular migrant workers who, by definition, constitute an unprotected, docile and easily exploited workforce.

Conditions in specific economic sectors

93. Migrants tend to be concentrated in sectors of economic activity with no health and safety protection, and little or no legal protection, where they are particularly vulnerable to human rights abuses. These sectors are described below.

(a) Women and children migrants, especially when they are victims of prostitution and pornography

94. Prostitution and pornography involving women and children are growth industries and, in many respects, can be considered as contemporary forms of slavery; they are incompatible with human rights. Trafficking in women for prostitution and pornography is an increasing phenomenon.

(b) Domestic workers

95. The isolation of domestic workers, most of them women, who are as a rule excluded from national labour laws, is conducive to serious violations of

human rights. The conditions of domestic workers often can be comparable to slavery: unduly long working hours, poor remuneration, no access to social security, inadequate food and isolation because they are afraid of the authorities and often do not speak the local language. As with trafficking, they are lured by the empty promises of agencies that are well organized and operate worldwide.

(c) Farm and seasonal workers

96. The persons involved are generally among the lowest paid and work under particularly hazardous conditions which, in extreme cases of exploitation, are also comparable to slavery. Migrant farm workers are particularly vulnerable to human rights abuses because of short-term employment opportunities, low level of education, working conditions which typically isolate them from the public eye, and often protectionist labour legislation favouring agro-business.

(d) Migrants in the informal economy

97. Another important group of migrants who are exposed to serious human rights abuses are those engaged in the informal economy of the receiving countries, where small and less competitive enterprises, especially in textile, garment-making and various service industries, try to save on social and labour costs by hiring cheap and often irregular migrant workers, increasingly with the help of traffickers. Few of these small enterprises come within the purview of national legislation, and even in cases where they do, financial and administrative constraints prevent law enforcement agencies from ensuring that the relevant laws are followed. The legal and administrative vacuum in the system of protection is further aggravated by the absence of fully established trade unions capable of providing protection to migrant workers in the informal economy. The result is inhuman exploitation and large-scale abuse of the basic labour and human rights of these migrant groups. Even in countries where general human rights and social legislation is well advanced, the working and living conditions of these migrant workers are often comparable to those of the slave labour conditions prevailing at the end of the nineteenth century. A most disquieting aspect of the situation is the continuing expansion of the informal economy in many migrant-receiving countries owing, at least in part, to the increasing use of this sector by respectable firms through subcontracting arrangements.

The impact of globalization

98. The consequences of the globalization process have not been given sufficient attention. The gap between the pace of economic globalization, especially in the form of increased flows of trade and investment, on the one hand, and the development of norms and institutions to address new and emerging social issues, on the other, has had serious repercussions on the situation of migrants. Inadequate legal standards and relaxed enforcement of such standards as do exist in situations such as a dramatic increase of temporary jobs, in which many migrants are employed, has led to a weakening of the protection system, especially with regard to health, safety and working conditions.

99. While increased globalization, including closer inter-penetration of markets has generated new demands for certain types of migrant labour in many receiving States, the failure to recognize such labour needs through clearly formulated policies has fuelled the numbers of irregular migrants.

100. Special attention should also be given to the situation created by the recent increase in the number of Export Processing Zones (EPZs) in the context of rapid economic globalization, although they do not generally involve large-scale cross-border movements.

101. It should be recalled that jobs in EPZs are badly paid and the working conditions are very poor. Mention should be made of the social problems existing in EPZs: local landlords take advantage of the accommodation shortage to charge enormous rents for sub-standard accommodation; transport services and social infrastructure (especially child-care facilities) are often non-existent; friction between the EPZ workers and local residents is common and real integration of workers in local communities is difficult to achieve, in particular because of the high turnover in many Zones. Furthermore, in many EPZs, 90 per cent of the workforce is made up of young female workers who are often abused by unscrupulous employers, targeted by local men preying on Zone workers and ostracized when they go back to their villages.

VII. RECOMMENDATIONS

A. Recommendations concerning institutional and legal obstacles

102. All individuals, wherever they may live, are entitled to the full enjoyment of all the rights laid down in the Universal Declaration of Human Rights. It is incumbent on all States to respect the fundamental human rights of migrants, regardless of their status. This obligation, which is without prejudice to the sovereign right of every State to determine the conditions under which foreigners may have access to the national territory, extends to all migrants, including those in an irregular situation. It also entails a corresponding obligation for the host country to guarantee migrants, including those in an irregular situation, treatment which does not undermine their human dignity. To give effect to this obligation, the receiving State should include in its legislation provisions which facilitate and permit access for migrants to all public services addressing their vital needs.

103. It is imperative for the international community to have a specific and consistent body of regulations for the promotion and protection of the human rights of migrants, to be used as a reference for the different bodies of national legislation to achieve this objective. The dispersive and fragmentary nature of international human rights law currently in force should in no way prevent States from fulfilling this obligation, with a view to ensuring that equality is effectively achieved. To this end:

States should be urged to ratify the 1990 United Nations Convention as well as the ILO Conventions, in particular Nos. 97 and 143;

At the same time, a compendium of provisions applicable to migrants under the relevant instruments of international law should be prepared;

States, in particular those which have already included international human rights standards in national legislation, should be urged to extend these basic rights to migrants explicitly, through appropriate legal enactment, due account being taken of the special needs and conditions of the various types of migrants (recruitment, job and housing security, family reunion, education and social security).

104. Having regard to the fact that the family is the basic unit of society, States should be encouraged to include in their legislation family reunification as a basic right of migrants.

105. In order to enhance the integration of migrants, host countries should examine, in a spirit favourable to migrants, the conditions and modalities relating to the acquisition of nationality of the host countries.

106. Given that a significant number of States have not ratified the various instruments guaranteeing the human rights of migrants or are not effectively implementing them, it is important to make full use of the protection of current and future regional and bilateral cooperation arrangements, especially those relating to migratory movements. These initiatives should run parallel to, and not be regarded as a substitute for, efforts to secure increased ratification and effective implementation of the existing international treaties concerning human rights, including the 1990 Convention on migrants. The establishment of agreements regarding the readmission of illegal migrants may, in some circumstances, be advisable.

107. Governments of host countries should be urged to share any reports of alleged violations of the human rights of migrants with the migrants' consular representatives, and to ensure the right of all migrants to assistance from those consular representatives in accordance with the Vienna Convention on Consular Relations.

B. Recommendations concerning social obstacles

108. If human rights imply empowerment, it becomes incumbent on all States to protect the right of migrants to freedom of association as a means of overcoming their vulnerability.

109. States should be encouraged to facilitate the establishment of democratically constituted associations of migrants and the participation of migrants in trade unions as a means of safeguarding their legitimate rights and maintaining continuing dialogue with the political leaders and the governmental agencies concerned.

110. The host country should be actively involved in the promotion and dissemination of information about the contributions made by migrants to the economy and society of the host country, thereby helping to combat xenophobia by promoting cultural diversity.

111. All necessary steps must, therefore, be taken to encourage the mass media to disseminate information on migrants and their rights, in an objective and unbiased manner and from a gender perspective. It would be desirable to encourage special programmes for this purpose by providing appropriate support and assistance to the institutions concerned. Furthermore, public and private

institutions concerned with the mass media should be urged to involve representatives of the migrant community both in their policy-making process and in preparing information programmes.

112. It is recommended that training be provided to government policy-making and law enforcement personnel at all levels regarding the existence, applicability, implementation and enforcement of human rights standards, as exemplified by the joint initiatives recently taken by several international organizations. Training courses concerning migrants specifically for advocates and counsellors within migrant communities are also recommended to promote self-help.

113. It is recommended that the United Nations designate a day as the International Day of the Migrant in order to highlight and promote the human rights of migrants: 18 December could be chosen, taking into account that the 1990 Convention on migrants was adopted by the General Assembly on 18 December 1990.

114. It is recommended that a specific item on migrants as victims of racism and discrimination be included in the agenda of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

C. Recommendations concerning economic obstacles

115. Since the informal economy which harbours a significant proportion of irregular migrants operates largely at the periphery or outside the national protection system, States should be encouraged to extend the basic human rights standards to this sector and to enforce them, and to assist enterprises to improve their economic capacity, thereby enabling them to meet these standards.

116. The globalization of the world economy is tending to expand the flow of migration, including migrants in an irregular situation. This phenomenon necessitates a more realistic assessment of the labour market needs of the countries concerned. If an economy faces a real scarcity of labour or of specific skills, it is advisable that these shortages be met through legal immigration or by adopting alternative policies capable of restoring equilibrium in the labour market.

117. Punitive measures should be taken against employers of irregular migrants and those who profit from the use of forced labour and slavery-like practices.

118. In view of the increasing scale of trafficking in human beings and related human rights abuses, as well as the low level of accession and ratification of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and the 1990 Convention on migrants, it is recommended that international standards relating to combating trafficking and the punishment of its perpetrators be reformulated and that minimum standards for the treatment of victims of trafficking in human beings, forced labour and slavery-like practices be elaborated. Such an instrument or instruments should address all aspects of trafficking and trafficking-related activities, contain clear and up-to-date definitions and provide for the establishment of a mechanism to ensure

effective implementation. Special attention should be accorded to the plight of women and children as the most vulnerable categories of migrants.

119. Within this context, the work on drafting an international legal instrument against trafficking and the illegal transport of migrants currently being carried out by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime deserves support. Every effort should be made to ensure humane conditions of repatriation for women and children who have been trafficked and who have been arrested by the authorities in the receiving or transit countries.

120. A distinction should be made between trafficking and irregular migration, given that trafficking is criminal behaviour which often victimizes irregular migrants and places them in slavery-like situations.

121. States should be urged to adopt legislation aimed at identifying and prosecuting traffickers, their accomplices and direct exploiters of illicit and forced labour. This task seems to be especially pressing for the sending countries, where recruiters are often operating virtually unimpeded.

122. Sending, transit and receiving countries should cooperate closely in tackling the problems of trafficking and they must assume their respective obligations in this connection.

D. Recommendation concerning a monitoring mechanism at the international level

123. Following an in-depth analysis of the obstacles to the enjoyment of the human rights of migrants, the working group strongly felt the need for the creation of an international mechanism to deal with human rights issues affecting different groups of migrants. In reaching this conclusion, the working group was guided by several important considerations, including the following:

Although existing human rights instruments contain a significant number of provisions of relevance to migrants, some serious deficiencies remain, owing to the lack of a consistent and focused approach to a vulnerable group which now comprises some 130 million people and presents issues that hold the potential of seriously affecting inter-State relations in the years to come.

While the 1990 Convention on migrants is notable for its focused attention to migrant workers and their families, several important migrant groups, including certain categories of migrant workers, remain outside its scope. Furthermore, all the indications are that there will be additional delay before the Convention, and thus its monitoring mechanism, becomes operational.

More careful attention is needed also in addressing the increasing number of gross violations of the human rights of migrants in different parts of the world.

124. This mechanism should be the appointment of a special rapporteur for a three-year period with the functions described in paragraph 48 of the present report and the terms of reference listed below:

To request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families;

To formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants;

To promote the development and effective application of international legal instruments on the issue;

To recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants.

Annex

PRELIMINARY OBSERVATIONS

HUMAN RIGHTS FRAMEWORK	OBSTACLES IN ACCORDANCE WITH THE FOLLOWING CRITERIA:			RECOMMENDATIONS FOR REMEDYING VIOLATIONS AGAINST MIGRANTS
	MIGRANTS' BASIC CONDITION A	WORLDWIDE PHENOMENA B	NATIONAL VARIATIONS C	D
UNIVERSAL DECLARATION OF HUMAN RIGHTS		Analysis of the information received confirms that there is an awareness of increasing migration and of increasing violations of basic human rights and a lack of remedial action.	National situations are not static ones. Need to strengthen the protection of human rights of nationals within and outside their territory.	Need for monitoring mechanisms at the international level, in particular because the 1990 Convention has not yet entered into force and it will be years before it is universally applicable. Need to develop bilateral and regional agreements, in particular regarding recruitment of workers, security of employment and residence, housing or accommodation, family reunification, education and social security, and readmission of "ex-irregular" migrants.
Articles 1 and 2		Restrictive anti-migration laws aggravate the flow of illegal migrants. Support of status quo by interest groups in sending and receiving countries.		The basic human rights of migrants have to be respected, even when migrants are irregular, without prejudice to the sovereignty of States, in particular, the sovereign right to decide who should or should not enter their territories.

HUMAN RIGHTS FRAMEWORK	OBSTACLES IN ACCORDANCE WITH THE FOLLOWING CRITERIA:			RECOMMENDATIONS FOR REMEDYING VIOLATIONS AGAINST MIGRANTS
	MIGRANTS' BASIC CONDITION A	WORLDWIDE PHENOMENA B	NATIONAL VARIATIONS C	D
	The level of vulnerability is affected by such factors as gender, age and whether or not the migrant is regular or irregular. The fact of being irregular renders the migrant more vulnerable.			
Articles 3 and 5	Victims of criminal exploitation in their countries of origin (usually when they have taken the decision to emigrate or when they are lured into leaving the country), in transit countries or in countries of reception.			Action has to be taken in order to bring to justice alleged perpetrators of violations of the human rights of migrants, in order to put an end to impunity and the abuse of power.
Articles 6 and 8	Unstable and precarious legal and administrative conditions.		Deficiencies in social security systems. Lack of sufficient legislative and administrative protection.	Administrative processes for regularization of illegal immigrants when possible. Legal and administrative measures to ensure stable and legal residence, provision of documents (birth certificates, social security cards, etc.) to avoid marginalization.

HUMAN RIGHTS FRAMEWORK	OBSTACLES IN ACCORDANCE WITH THE FOLLOWING CRITERIA:			RECOMMENDATIONS FOR REMEDYING VIOLATIONS AGAINST MIGRANTS
	MIGRANTS' BASIC CONDITION A	WORLDWIDE PHENOMENA B	NATIONAL VARIATIONS C	D
Article 7	Victims of racism and xenophobia.		Insufficient democratic values and tolerance. Lack of sufficient steps to achieve integration.	Political parties and the civil society are responsible for safeguarding and promoting human rights values. The role of information and media outlets should be explored, particularly highlighting the economic and social enrichment that migrants bring. Establishment of an International Day of the Migrant.
Article 15			Denial of host country citizenship. Denial of dual citizenship, creating social and legal problems for migrants and their families.	
Article 16			Denial of family unification for the offspring of migrants who are no longer minors. Marital status should not affect the residency rights of women divorced on the grounds of violence.	
Article 21			Denial of possibility of participating in local and municipal elections.	

HUMAN RIGHTS FRAMEWORK	OBSTACLES IN ACCORDANCE WITH THE FOLLOWING CRITERIA:			RECOMMENDATIONS FOR REMEDYING VIOLATIONS AGAINST MIGRANTS
	MIGRANTS' BASIC CONDITION A	WORLDWIDE PHENOMENA B	NATIONAL VARIATIONS C	D
Articles 23, 25 and 26	Conditions of economic deprivation.	The globalization of the world economy is tending to expand the flow of migration; some sectors of the economy are profiting from the labour of migrants in irregular situations.		
	Social exclusion and/or marginalization.	Imbalance between opportunities for work and the number of workers.	Unsuitable working conditions. Denial of equal pay for equal work.	Need to adopt measures in order to achieve equality, in law and in practice. Find ways to guarantee the principle of equal opportunities, including facilitating judicial remedies.
	Linguistic and other types of barriers.		Unjustified discrimination, in particular in areas such as education and health.	
CAT, CERD, CCPR, CESCR, CEDAW		Failure to enforce existing international human rights instruments in favour of migrants.	Different degrees of compliance with international instruments that have been ratified, in particular, articles relevant to migrant issues.	Need to request treaty bodies to focus more systematically on migrant issues. Need to find ways to complement the treaty bodies' work.